

In Re: Vision Fund 2000 (Provision Foundation))
 Ward 6, Map 95HA, Control Map 95, Parcels 5 & 6) Knox County
Claim of Exemption)

1

Vision Fund 2000 agreed to lease the property for one dollar (\$1.00) a year to another "501(c)(3)" corporation headed by Kenny Woodhull -- a Knoxville chaplain with whom the lessor had developed a working relationship.

The lessee, Old City-New City Community, Inc. ("New City"), was founded by Mr. Woodhull in 1998. This non-denominational religious corporation was formed for the following declared purposes:

- (a) primarily to spread the gospel of Jesus Christ in the historic district of Knoxville, Tennessee, known as the Old City;
- (b) to that end, to encourage Christian artists, including dramatists, musicians, writers, story-tellers, and visual artists, by providing them inter alia an entertainment venue and an enriching community;
- (c) To serve the Christian community in the greater Knoxville area through the provision of services, resources, and networking capabilities;

...

Charter, paragraph 9.

Under the terms of the lease agreement, New City is responsible for payment of any taxes on the subject property. The lease further provides in paragraph 3.1 that New City may use this property "for any religious purposes or activities in keeping with its organization and mission as a non-profit entity organized to promote and promulgate a Christian message through the cultivation of Christian Art, Evangelism, and Discipleship and uses related thereto."

In a letter dated November 24, 2003 and signed by ProVision Vice President/Chief Financial Officer Anne H. Sale, the daily activities in the New City Café were described as follows:

Sunday and Monday nights, student groups utilize the facility for worship, discipleship, and evangelistic purposes. These are free events. At various times throughout the month, bible studies, seminars, and issue specific workshops are held on Tuesday and Wednesday nights or Friday and Saturday mornings. Depending upon the need, donations are accepted to offset expenses. Thursday-Saturday evenings are set aside for the cultivation of Christian musical artists.

By the time of the hearing, however, the regular business hours posted on the door (6:00 p.m. until midnight, Thursday through Saturday) were no longer in effect. New City Café is presently open to the general public only for scheduled concerts by Christian artists who have, in Mr. Woodhull's words, "a desire to present the gospel." Mr. Woodhull handles the booking of these events, which are usually held on Thursday, Friday, or Saturday. The cover charges or ticket prices for the concerts, which are sometimes advertised in the local media, vary

depending on the artist.² As indicated in the five-page attachment downloaded from New City's Web site (www.newcitycommunity.org), the organization also hosts a "handful" of seminars, discussions, and similar gatherings in the building. Mr. Woodhull has implemented a "sliding scale" of fees for usage of the facility, based mainly on ability to pay.

Around August of 2005, New City Café discontinued food sales on the premises. Only coffee and soft drinks are sold there now.

According to its profit and loss statement for the year ending December, 2003, New City derived about half of its total income (\$212,940.06) from donations. Concessions and performance revenue accounted for most of the remainder. Mr. Woodhull, who is New City's executive director and only employee, has an office on the second floor of the subject building. He also works part-time as a consultant in the Knoxville area – though not, he testified, out of that office.

Counsel for the appellant contended that the subject parcels should be wholly exempt from taxation. New City Café, Mr. Roettger stressed, makes no effort to compete with other food-and-drink vendors and music venues in the vicinity "on their terms"; no alcohol or smoking is allowed at this establishment. But he asserted that, in a world brimming with entertainment options, the church "needs a hook....New City Café knows that music and food are a means of reaching an audience that otherwise would tune out Christianity." In his view, the predominantly Christian rock concerts staged on the premises represented the "joyful noise" capable of attracting the younger generation into the fold.

Tenn. Code Ann. section 67-5-212(a)(1)(A) provides (in relevant part) that:

There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, charitable, scientific or nonprofit educational institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists, or which is occupied and used by another exempt institution purely and exclusively for one (1) or more of the purposes for which it was created or exists under an arrangement whereunder the owning institution receives no more rent than one dollar (\$1.00) per year; provided, that the owning institution may receive a reasonable service and maintenance fee for such use of the property....

The phrase *purely and exclusively* in this statute has been construed to mean that the property in question must be put to a use which is "directly incidental to or an integral part of" an exempt purpose of the institution. Methodist Hospitals of Memphis v. Assessment Appeals Commission, 669 S.W.2d 305 at 307 (Tenn. 1984).

²Mr. Woodhull stated that some persons who were unable to afford the cost of a concert were admitted for free.

In this state, contrary to most other jurisdictions, property tax exemptions are liberally construed in favor of religious, charitable, scientific, and educational institutions. See, e.g., Youth Programs, Inc. v. State Board of Equalization, 170 S.W.3d 92 (Tenn.Ct.App. 2004). Nonetheless, as the party appealing from the initial determination on its application for exemption, Vision Fund 2000 has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(2).

After reviewing all the evidence of record, the administrative judge cannot recommend any additional exemption of the subject property. Indeed, considering that New City Café appears to have become predominantly a music venue, the 50% exemption approved by the State Board's executive secretary some 18 months ago may be rather generous.

At this point, of course, it is well settled that eligibility for tax-exempt status as a religious institution is not limited to traditional churches or denominational organizations. But the Supreme Court of Tennessee has held that:

The publishing and printing of books for the general public, **even though the subject matter of such books is religious**,...is not within the statutory exemption.

Book Agents of the Methodist Episcopal Church, South v. State Board of Equalization, 513 S.W.2d 514, 524 (Tenn. 1974). [Emphasis added.]

In American Family Association, Inc. (Madison County, Initial Decision and Order, January 18, 2002), a so-called "para-church" 501(c)(3) organization which owned a network of Christian radio stations sought exemption of the personal property used in the operation of its Jackson, Tennessee affiliate. While acknowledging "the historical role of music in church services and other religious functions," the undersigned administrative judge rejected "the notion that, in playing recordings intended for commercial distribution, the station is carrying on a religious ministry." *Id.* at p. 5. The denial of exemption was upheld on the following rationale:

Viewed more objectively, the music aired on WAMP is a form of entertainment that serves as an inducement for contributions – on which the viability of AFA ultimately depends. The Christian artists, for their part, rely on the station for exposure of the records that they hope to sell in competition with purveyors of secular music. Meanwhile, WAMP vies with commercial radio stations for the greatest possible share of the listening audience. The existence of such competition with tax-paying businesses does not foreclose a claim of exemption; but it is a relevant consideration. (Citation omitted.) The State Board must be especially sensitive to the appearance of subsidizing one segment of a highly competitive industry or trade based on the religious beliefs of the persons engaged in it.

Ibid.

The Assessment Appeals Commission affirmed this decision, finding that "the broadcast use of this property is at best of a generally religious character not unlike the general religious

character of the publishing activities denied exemption in *Book Agents*.” American Family Association, Inc. (Madison County, Final Decision and Order, June 25, 2003), p. 2. The Commission concluded:

We are quick to concede there is much in our culture that needs battling, and many traditional religious institutions call their adherents to these battles from the pulpit or otherwise. On the other hand we find no support in this case or experience for extending the property tax exemption for religious institutions so far beyond the house of worship.

Id. at p. 3. See also WAY-FM Media Group, Inc. (Williamson County, Final Decision and Order, August 12, 2002).

In the opinion of the administrative judge, these observations are equally pertinent with respect to New City Café. Like Christian rock radio stations, it affords developing and established acts the opportunity to exploit their talents for monetary gain from personal appearances and sales of recordings. In fact, the sample performance contract submitted by the applicant requires it to provide “a table from which (the performer) may make information and product available” as well as to remit a percentage of the gate. Notwithstanding New City’s recent abandonment of the “café” (food) concept, the administrative judge cannot conceive that the Assessment Appeals Commission would view the subject property more favorably than that involved in American Family Association or WAY-FM insofar as this property is devoted to paid performances by contemporary Christian artists.

Order

It is, therefore, ORDERED that the initial determination of the State Board’s executive secretary be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26th day of October, 2006.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Kenny Woodhull, Vision Fund 2000 (Provision Foundation)
Broadus Hubbs, Director, Exemption Department, Knox County Assessor's Office
Susan E. Crabtree, Knox County Deputy Law Director

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